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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/657,663	09/05/2003	C. Keith Bryant	219930	2161
23460	7590	06/24/2005		
LEYDIG VOIT & MAYER, LTD TWO PRUDENTIAL PLAZA, SUITE 4900 180 NORTH STETSON AVENUE CHICAGO, IL 60601-6780			EXAMINER ELKINS, GARY E	
			ART UNIT	PAPER NUMBER
			3727	

DATE MAILED: 06/24/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/657,663

Applicant(s)

BRYANT, C. KEITH

Examiner

Gary E. Elkins

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☒ Claim(s) 1-5 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Claim Objections***

1. Claims 1-5 are objected to because of the following informalities: In claim 1, lines 3 and 5, “a opposing” in each line is grammatically unclear. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

2. Claims 12-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The following are each unclear insofar as a plurality of the recited element were previously set forth in the claims and one cannot determine which of the plurality is being referred to: claim 12, “the tab” and “the flange” and claim 13, “the tab” (two occurrences) and “the flange” (two occurrences).

In claim 13, “a slot disposed between the side panels and the flange” is unclear with respect to how a single slot is disposed between all four side panels and a single one of the flanges, i.e. it would appear that a slot is disposed between each of the side panels of the second pair and the respective flange attached thereto.

In claim 14, lines 4 and 5, “a side panel” and “two side panels” are each a double inclusion of an element, i.e. the element is being reintroduced into the claim.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 2, 6, 9, 11, 12 and 14-17 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Calvert et al.

5. Claims 1, 6, 9, 12 and 14-17 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Deckys.

6. Claims 1, 2, 4-7, 9-11, 13-15 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Beeler. Beeler discloses a tab (31T or 61T or 32T, etc.) formed as part of each gusset (31, 61; 32, 42, etc.) and a window (83 or 84) formed in a cover 80 as claimed.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Deckys. Deckys discloses all structure of the claimed blank except formation of the adhesive spot (76) on the tabs, i.e. Deckys discloses the adhesive spot on the first and third flanges (68). It would have been obvious to change the location of the adhesive spots on the blank of Deckys from the flanges to the tabs as a mere change in the location of the adhesive. No functional distinction is seen nor has any been asserted by Applicant by forming the adhesive on the opposing surface to which the adhesive is to be bonded when forming the container. A mere change in the location of a part when the operation of the device remains unaffected has been held to be obvious. See In re Japikse, 86 USPQ 70 (CCPA 1950).

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9. Claims 5, 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Deckys in view of Gulliver. Deckys discloses all structure of the claimed carton and blank except formation of a window on the cover. Gulliver teaches that it is known to make a window within the cover of a box. It would have been obvious to make the cover in Deckys with a window as taught by Gulliver to allow viewing of the contents without opening the box. Windows are notoriously well known in this art.

### *Conclusion*

The remaining cited prior art is illustrative of the general state of the art.

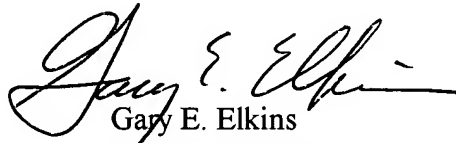
In order to reduce pendency and avoid potential delays, Technology Center 3700 is encouraging FAXing of responses in Office Actions to (703)872-9306. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by Applicants who authorize charges to a PTO deposit account. Please identify the Examiner and art unit at the top of your cover sheet.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. Also, copies of an office action or other file information may be obtained from the Private PAIR system. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions regarding access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Any inquiry concerning this communication or earlier communication from the Examiner should be directed to Gary Elkins at telephone number (571)272-4537. The Examiner can normally be reached Monday, Tuesday and Thursday.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Mr. Lee Young can be reached at (571)272-4549.

  
Gary E. Elkins  
Primary Examiner  
Art Unit 3727

gee  
22 June 2005